Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1977

NO. 27 ORIGINAL

STATE OF TENNESSEE,
Plaintiff,

vs.

STATE OF ARKANSAS,
Defendant.

MOTION FOR LEAVE TO FILE COMPLAINT

COMPLAINT AND BRIEF IN SUPPORT OF MOTION FOR LEAVE TO FILE COMPLAINT

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1977

NO. ..... ORIGINAL

STATE OF TENNESSEE,
Plaintiff,

vs.

STATE OF ARKANSAS,
Defendant.

MOTION FOR LEAVE TO FILE COMPLAINT

The State of Tennessee, appearing by and through its Attorney General, Brooks McLemore, acting pursuant to the authority and powers vested in him by Tennessee Code Annotated Section 8-610, respectfully states as follows:

1. A portion of the boundary between the State of Tennessee and the State of Arkansas common to the County of Lauderdale, Tennessee, and the County of Mississippi, Arkansas, is in dispute.

2. This boundary dispute between the State of Tennessee and the State of Arkansas is subject to the exclusive

original jurisdiction of the Supreme Court of the United States.

3. An action is presently pending in the United States District Court for the Western District of Tennessee, Western Division, styled *Reviere v. Westvaco, Inc. and the State of Arkansas*, No. C-76-183, in which, as shown by Exhibit "A" annexed to the attached Complaint, the defendant State of Arkansas is claiming jurisdiction and control over a portion of the lands involved in this boundary dispute contrary to the continued assertion of jurisdiction, dominion and control of said area by the State of Tennessee under its inherent sovereignty. The *Reviere v. Westvaco, Inc. and the State of Arkansas* civil action has been stayed, as shown by Exhibit "B" annexed to the attached complaint.

WHEREFORE, the State of Tennessee respectfully prays that this Honorable Court take original jurisdiction and grant to the plaintiff leave to file its complaint in this Court, and plaintiff further prays for such order and process as the Court may deem proper in pursuance of the annexed complaint and application for order.

BROOKS McLEMORE
Attorney General
State of Tennessee

ROBERT J. AMES
Assistant Attorney General

ROBERT B. LITTLETON
Assistant Attorney General

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1977

NO. ..... ORIGINAL

STATE OF TENNESSEE,
Plaintiff,

vs.

STATE OF ARKANSAS,
Defendant.

COMPLAINT

The State of Tennessee, appearing by and through its Attorney General, Brooks McLemore, acting pursuant to the authority and power vested in him by Tennessee Code Annotated Section 8-610, institutes this original action against the State of Arkansas and makes parties hereto the following citizens of the State of Arkansas: The Honorable David Pryor, Governor of the State of Arkansas, and the Honorable William J. Clinton, Attorney General for the State of Arkansas.

I

The original jurisdiction of this Court is invoked under Article III, Section 2 of the Constitution of the United States and 28 U.S.C. § 1251(a)(1) (1948).

II

The State of Tennessee was admitted to the Union of the United States of America by an Act of Congress in 1796. Act of June 1, 1796, ch. 47, 1 Stat. 491. Under the terms of the Treaty of Peace between Great Britain and the United States, which was concluded on September 3, 1783, 8 Stat. 80, the territory comprising, *inter alia*, the present State of Tennessee, was passed to the United States. Article II of this Treaty described the western boundary of this territory as "a line to be drawn along the middle of said river Mississippi." Treaty of Peace, *supra.*, 8 Stat. 80, 82. In 1790 the territory comprising the present State of Tennessee was ceded to the United States by the State of North Carolina. Act of April 2, 1790, ch. 6, 1 Stat. 106. The whole of the territory thus ceded by the State of North Carolina was made the State of Tennessee by the previously cited Act of June 1, 1796, ch. 47, 1 Stat. 491.

III

The State of Arkansas was admitted to the Union on June 15, 1836 by an Act of Congress. Act of June 15, 1836, ch. 100, 5 Stat. 50. This Act describes the State's boundaries as follows:

> "Beginning in the middle of the main channel of the Mississippi river, on the parallel of thirty-six degrees north latitude, running from thence west, with the said parallel of latitude, to the St. Francis river; thence up the middle of the main channel of said river to the parallel of thirty-six degrees thirty minutes north; from thence west to the southwest corner of the State of Missouri; and from thence to be bounded on the west, to the north bank of Red River, by the lines described in the first article of the treaty between the United States and the Cherokee Nation of

Indians west of the Mississippi, made and concluded at the city of Washington on the 26th day of May, in the year of our Lord one thousand, eight hundred and twenty-eight; and to be bounded on the south side of Red river by the Mexican boundary line, to the northwest corner of the State of Louisiana; thence east, with the Louisiana state line, to the middle of the main channel of the Mississippi river; thence up the middle of the main channel of the said river, to the thirty-sixth degree of north latitude, the point of beginning."

IV

The effect of these Congressional enactments, as interpreted by this Honorable Court in *Arkansas v. Tennessee*, 246 U.S. 158 (1918), is that the middle of the main navigable channel, or thalweg, of the Mississippi River is the common boundary between the States of Arkansas and Tennessee.

V

Under the law of the State of Arkansas, a riparian owner owns to the ordinary high-water mark of the Mississippi River and the State owns the bed of the River to the boundary line of the States of Arkansas and Tennessee. Under the law of the State of Tennessee, a riparian owner owns to the ordinary low-water mark of the Mississippi River and the State owns the bed of the River to the boundary line of Tennessee and Arkansas.

VI

Prior to 1912, the main channel and thalweg of the Mississippi River between latitude 35 degrees 46 minutes N. and latitude 35 degrees 39 minutes N. flowed to the west and north

of a series of islands, towheads and bars in the area known as Plum Point Reach. The two major islands, towheads or bars, in this area were Island No. 30 and Elmot (Elmont) Bar, later also to be known as an island. In 1912 and 1913, major Mississippi River flooding occurred in the Plum Point Reach area. Additionally, during the same period of time, the main channel of the Mississippi River immediately north of Plum Point Reach shifted from the northwestern side to the southeastern side of Forked Deer Island, also known as Island No. 26 and Island No. 27. The shift in the main channel of the River at Forked Deer Island caused the River to direct its flow in a straight line for some distance along the left descending bank of Plum Point Reach. During the period from 1914 through 1920, as a combined result of the 1912 and 1913 floods and the shift of the main channel of the River at Forked Deer Island, a series of dikes to the south and east of Elmot Bar near Golddust, Tennessee, collapsed, and the Mississippi River progressively carved out a new main channel to the south and east of Elmot Bar, Island No. 30 and other islands, towheads and bars. Concurrently, the former main channel to the north and west of Elmot Bar, Island No. 30 and other islands, towheads and bars, was lessened by channel filling. Between 1918 and 1920, the enlarged chute channel along the left descending bank of the Mississippi River became the main navigational channel of the River in Plum Point Reach, thereby causing navigation to abandon the boundary channel to the north and west of said islands, towheads and bars.

VII

As the Mississippi River proceeded to carve out its new main channel along the left descending bank, as described in paragraph VI of this Complaint, Island No. 30, Elmot Island as well as other smaller island areas were gradually extended both downriver and westward by virtue of the force of the flow of

the Mississippi River, which eroded the heads of the islands while adding accretions to the west sides and lower ends of each of these islands. The net effect of the combined and concurrent erosion and accretion was to cause the islands to extend their external limits downstream and westward toward the Arkansas bank as the Mississippi River gradually abandoned the old boundary channel that looped these island areas along the right descending bank.

VIII

In the early 1930's, the United States Army Corps of Engineers conducted bank revetment, dike and dredging projects in order to facilitate the flow of the Mississippi River in the Plum Point Reach area and to improve navigation. Two of the dredging projects resulted in two land masses being severed from the Tennessee mainland near Keyes Point. The two land masses severed from the mainland thus became island areas and, like Elmot Island, Island No. 30 and other islands, towheads and bars, these two island areas extended westward to the Arkansas bank due to the erosion and accretion forces of the Mississippi River flowing through and enlarging the dredged channels.

IX

The westward and southward extension of Elmot Island, Island No. 30, the dredge-created islands and several other island areas toward the Arkansas bank, eventually resulted in their consolidation into the large land area that borders the abandoned boundary channel as shown on the map appended to this Complaint as Exhibit "C". As illustrated by this exhibit, this large area of island lands is generally separated from the Arkansas mainland by a narrow remnant of the abandoned boundary channel stretching from Fletcher Towhead to south

of Bullerton Towhead. Within the large area of the island lands, there are two or three small areas the State of Tennessee claims which are presently attached to the Arkansas mainland and which became separated from the island lands by the River's avulsive action. Marked on the attached Exhibit "C", by a dotted line, is the entire area involved in this boundary dispute and claimed by the State of Tennessee. Exhibit "C" is a photographic reproduction and reduction of four quadrangle maps depicting Plum Point Reach as issued by the United States Geological Survey in 1972.

X

The shift of the main commercial channel of the Mississippi River in Plum Point Reach from the right descending bank to the left descending bank, caused Elmot Island, Island No. 30 and other smaller island areas and bars thereafter to be located on the Arkansas side of the River. This shift was avulsive. In this natural process, the River enlarged and adopted the lesser chute channel to the south and east of these island formations, thereby leaving the Tennessee-Arkansas state boundary fixed along the thalweg of the old abandoned boundary channel to the north and west of these island formations.

XI

The changes in the main navigable channel of the Mississippi River, as a result of the two (2) dredgings described in paragraph VIII of this Complaint, were avulsive. The boundary between the states of Arkansas and Tennessee, as described in paragraph X of this Complaint, was not altered by these dredgings and channel changes which occurred within the State of Tennessee.

XII

Since the time of the changes of the main navigable channel of the Mississippi River in the Plum Point Reach area, as described heretofore, disputes and litigation involving the ownership and taxation of the land area in question have arisen. *Reviere v. Westvaco, Inc., et al.*, United States District Court, Western District of Tennessee, Western Division, No. C-76-183; *Smith v. Smith*, United States District Court, Eastern District of Arkansas, Jonesboro, Division, No. J-702-38 (April 4, 1973); and *Conway v. Shuck*, 203 Ark. 559, 157 S.W.2d 777 (1942). These legal controversies have created uncertainty as to the collection of taxes and private ownership of land in the area and make it desirable that the state boundary be fixed and determined by this Court. The decision of the Supreme Court of the United States herein will be conclusively binding on all private parties, and it alone has the power to fix and determine the boundary between the sovereign States of Arkansas and Tennessee.

XIII

In the necessary and essential exercise of sovereign rights, the exact location of the boundary line betwen the State of Tennessee and the State of Arkansas, in the area described, is of major and substantial significance to the respective states in view of the great value of the lands involved, the need to avoid multiplicity of suits involving title to the lands, and the necessity of fixing a boundary line for purposes of taxation.

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays:

1. That process issue to all parties as required by law;
2. That a Special Master be appointed to hear this cause;
3. That on final hearing, the boundary line of the State of Tennessee and the State of Arkansas, from just

south of Golddust, Tennessee, to the foot of Bullerton Towhead, Arkansas (approximately from AHP mile 791 to AHP mile 784), be fixed and determined.

4. That the claim of right and title asserted by the Honorable David Pryor, Governor of the State of Arkansas, and the Honorable William J. Clinton, Attorney General of the State of Arkansas, in and to such Tennessee lands as fixed and determined herein, be herewith cancelled and forever held for naught.

5. That petitioner have such other and further relief as is just.

Respectfully submitted,

BROOKS McLEMORE
Attorney General
State of Tennessee

ROBERT J. AMES
Assistant Attorney General

ROBERT B. LITTLETON
Assistant Attorney General

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1977

NO. ..... ORIGINAL

STATE OF TENNESSEE,
Plaintiff,

vs.

STATE OF ARKANSAS,
Defendant.

BRIEF OF THE STATE OF TENNESSEE IN SUPPORT OF MOTION FOR LEAVE TO FILE COMPLAINT

OPENING STATEMENT

As set forth in the Motion and the Complaint, filed by the State of Tennessee, the proposed suit involves a determination of the exact location of a portion of the eastern boundary line of the State of Arkansas common to the State of Tennessee.

I

JURISDICTION OF SUITS BETWEEN STATES

The Supreme Court of the United States has exclusive original jurisdiction of all controversies between states. As set forth in Article III, Section 2, Clause 1 of the Constitution:

> "All cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be a party, the Supreme Court shall have original jurisdiction."

The provisions of 28 U.S.C. § 1251(a)(1) (1948) are as follows:

> "(a) The Supreme Court shall have original and exclusive jurisdiction of:
>
> "(1) All controversies between two or more states; . . ."

II

THE MOTION FOR LEAVE TO FILE SHOULD BE GRANTED

Jurisdiction vests since this is a suit between the States of Tennessee and Arkansas.

The value of the property involved is great. The rights of the State of Tennessee, its citizens and property owners are real and substantial. The controversy exists and is justiciable. The Supreme Court of the United States is the only forum to settle this dispute, fix the boundary line between the States, and determine finally the rights of the parties. See *Florida v. Georgia*, 17 How. 478 (1855); *Oklahoma v. Texas*, 258 U.S. 574 (1922); and *Texas v. Florida*, 306 U.S. 398 (1939).

III

CONCLUSION

Based on the foregoing authorities, the State of Tennessee respectfully requests that its Motion for Leave to file Complaint be granted.

Respectfully submitted,

BROOKS McLEMORE
Attorney General
State of Tennessee

ROBERT J. AMES
Assistant Attorney General

ROBERT B. LITTLETON
Assistant Attorney General

APPENDIX

EXHIBIT A

In the United States District Court for the
Western District of Tennessee
Western Division

Calvin B. Reviere, Sr., **Plaintiff,**

v. No. C-76-183

Westvaco, Inc., **Defendant.**

Motion of the State of Arkansas to Intervene as a Defendant

The State of Arkansas by and through Bill Clinton, Attorney General of Arkansas, files this Motion to Intervene as a Defendant in the referenced cause and in support thereof states:

1. The State of Arkansas through the Attorney General moves for leave to intervene as a defendant in this action in order to assert defenses against the claim of Calvin B. Reviere, Sr. who claims ownership of property either located on or that is a part of Elmont Island as a result of purportedly acquiring it by virtue of a tax sale held by the County of Lauderdale in the State of Tennessee.

2. In support of its Motion to Intervene, the State of Arkansas would show that its political subdivision, Mississippi County, has collected the taxes and exercised civil and criminal jurisdiction over the land known as Elmont Island for more than 30 years. During this time there have been two challenges from Tennessee residents and officials claiming that the lands are within the State of Tennessee. The Supreme Court of the State of Arkansas and the U.S. District Court for the Eastern District of Arkansas, Jonesboro Division, have held that the land known as Elmont Island is located in the State of Arkansas.

3. The lands adjacent to those claimed by the plaintiff in the above captioned cause and forming a part of the same island

formation as apparently claimed by the plaintiff in his Complaint are owned by Arkansas residents who pay taxes to and seek the protection of the State of Arkansas through its political subdivision insofar as civil and criminal jurisdiction are concerned.

4. The Arkansas Game and Fish Commission has easements of record properly recorded in Mississippi County, Arkansas, in furtherance of their jurisdiction, activities, and conservation practices.

Very similar issue of fact and law asserted in the Complaint exist between intervenor and the plaintiff and such issues are common to those in the main action. The intervention will in no degree delay or prejudice adjudication of the rights of the parties.

Bill Clinton
Attorney General
Justice Building
Little Rock, Arkansas 72201
By: Frank B. Newell
Deputy Attorney General

Certificate of Service

I, Frank B. Newell, Deputy Attorney General, do hereby certify that a copy of the foregoing Motion to Intervene has been forwarded by U.S. Mail, postage prepaid to Mr. Calvin B. Reviere, Sr., by his attorney, Robert G. Miller, 116B Jefferson Street, Ripley, Tennessee 38063, Mr. John P. Colton, Jr., Suite 1205, 100 North Main Building, Memphis, Tennessee 38103, Mr. G. D. Walker, attorney for Armstrong Cork Company, P.O. Box 1346, Jonesboro, Arkansas 72401 and Westvaco, Inc., by their attorney, Dale Woodall, 900 Memphis Bank Building, Memphis, Tennessee 38103 this 17 day of March, 1977.

Frank B. Newell
Deputy Attorney General

EXHIBIT B

September 28, 1977

Robert M. McRae
Judge
Mr. Robert G. Millar
116 B Jefferson
Ripley, Tennessee 38063

Mr. John P. Colton, Jr.
No. 1205 100 North Main
Memphis, Tennessee 38103

Mr. Dale Woodall
Mr. Charles P. Cobb
No. 900 Memphis Bank Building
Memphis, Tennessee 38103

Mr. Frank B. Newell
Deputy Attorney General
Justice Building
Little Rock, Arkansas 72201

Re: C-76-183, **Reviere v. Westvaco, Inc. and the State of Arkansas**

Gentlemen:

This is to inform you that the Honorable Brooks McLemore, Attorney General for the State of Tennessee, has advised me that it is the present intention of the State of Tennessee to file suit in the United States Supreme Court in order to resolve a disputed boundary between the states of Arkansas and Tennessee. It is my understanding and belief that this litigation will

involve real property that is the subject of the above-styled pending case in this Court. Therefore, I agree with those who believe that we should await the outcome of the Supreme Court litigation before trying the case in question.

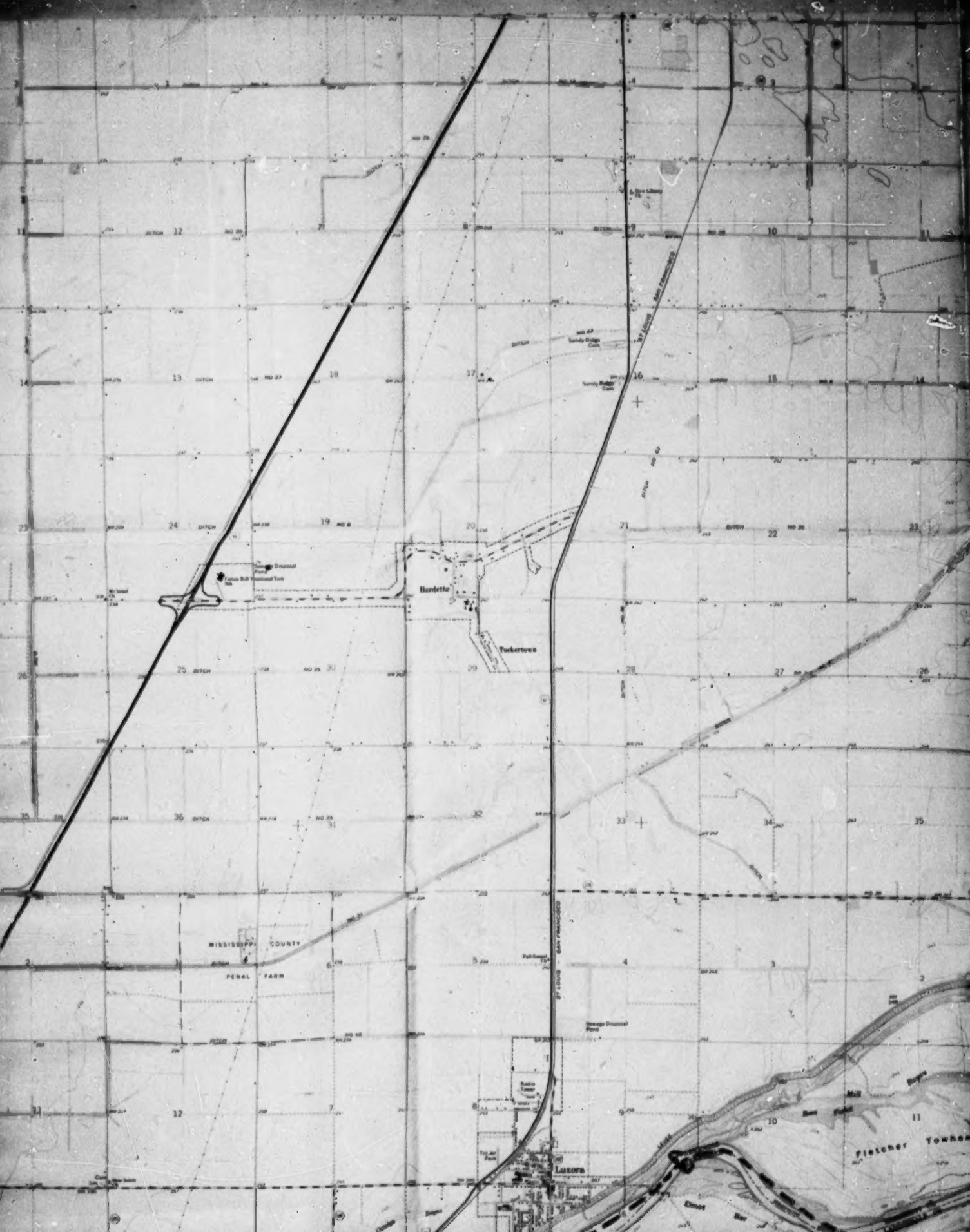
I do not know how long it will take to resolve the case in the Supreme Court; however, based upon limited experience with other matters such as this, it could be a matter of years. It is my suggestion that we stay this case in this Court by not putting it on the calendar for pre-trial and trial. By copies of this letter I will request that the offices of the Attorney General of the State of Arkansas and of Tennessee advise the Court in a year as to the status of the pending case. Of course, if for any reason the litigation is settled or otherwise terminated prior to that time, we would expect to be advised of its termination.

Very truly yours,

/s/ Robert M. McRae

RMM/jb

cc: The Hon. Brooks McLemore
Court Clerk


Hardette
Tuckertown
MISSISSIPPI COUNTY
PENAL FARM
ST LOUIS - SAN FRANCISCO
Luxora
Fletcher

MISSISSIPPI
RIVER
ISLAND NO 35
Tailler
Islands
MISSISSIPPI
RIVER

RIVER
MISSISSIPPI

KATE AUBREY
TOWNHEAD
RIVER
PLUM POINT REACH

Supreme Court, U.S.
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APR 18 1978
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1977

No. 77 ORIGINAL

STATE OF TENNESSEE ..... *Plaintiff*

vs.

STATE OF ARKANSAS ..... *Defendant*

RESPONSE TO MOTION AND BRIEF IN OPPOSITION TO MOTION FOR LEAVE TO FILE COMPLAINT

BILL CLINTON
Attorney General
State of Arkansas
JUSTICE BUILDING
LITTLE ROCK, ARKANSAS 72201

FRANK B. NEWELL
Deputy Attorney General

ELLEN B. BRANTLEY
Assistant Attorney General
Attorneys for Defendant

REQ. No. 77-16253

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Section 2, Clause 2 4

CONCLUSION 7

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1977

No. 77 ORIGINAL

STATE OF TENNESSEE ..... *Plaintiff*

vs.

STATE OF ARKANSAS ..... *Defendant*

RESPONSE TO MOTION AND BRIEF IN OPPOSITION TO MOTION FOR LEAVE TO FILE COMPLAINT

RESPONSE TO MOTION FOR LEAVE TO FILE COMPLAINT

The State of Arkansas, by its Attorney General, Bill Clinton, for its response to plaintiff's motion for leave to file complaint, states:

I.

The State of Arkansas has not had sufficient time to employ an expert in this field to examine the geographical area in question or the documents claimed by plaintiff to establish its title to this geographical area.

II.

Until such time as the State of Arkansas has had an oppor-

tunity to thoroughly explore plaintiff's claim to the geographical area in question and arrive at a conclusion as to the validity of plaintiff's claim, a dispute as to the boundary line between the parties does not exist.

III.

Even assuming that a boundary dispute between the parties does exist and would normally be subject to the exclusive original jurisdiction of this Court, the dispute is not in a posture for judicial determination because each party has clearly communicated to the other its preference to resolve this matter through an interstate agreement or compact.

IV.

Neither party should unnecessarily be put to the great expense of litigation until negotiations regarding an interstate agreement or compact fail.

V.

The docket of this Court should not be burdened with unnecessary and premature litigation.

WHEREFORE, the State of Arkansas respectfully prays that this Court decline to exercise jurisdiction over this matter

at this time and deny plaintiff's motion for leave to file complaint.

Respectfully submitted,

BILL CLINTON
Attorney General
State of Arkansas
JUSTICE BUILDING
LITTLE ROCK, ARKANSAS 72201

FRANK B. NEWELL
Deputy Attorney General

ELLEN B. BRANTLEY
Assistant Attorney General
Attorneys for Defendant

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1977

No. 77 ORIGINAL

STATE OF TENNESSEE ..... *Plaintiff*

VS.

STATE OF ARKANSAS ..... *Defendant*

BRIEF OF THE STATE OF ARKANSAS IN OPPOSITION TO MOTION FOR LEAVE TO FILE COMPLAINT

I.

THE MOTION FOR LEAVE TO FILE COMPLAINT SHOULD BE *DENIED*

Although the proposed suit would involve a determination of the exact location of a portion of the eastern boundary of the State of Arkansas and as such would normally come under the jurisdiction of the Supreme Court of the United States pursuant to Article III, Section 2, Clause 2 of the Constitution, the Supreme Court should not take jurisdiction of the matter at this time for two reasons. First, the "boundary dispute" is as yet inchoate because the State of Arkansas has not had an adequate opportunity to examine the claims asserted by the State of Tennessee. Second, both parties have unambiguously expressed

the desire to settle by interstate compact or agreement any dispute that does arise.

Tennessee has not formally or informally demanded any relief whatever from Arkansas but has, instead, after a conference between their representatives, attempted to file suit in this Court.

Even assuming for the purposes of argument that a dispute does exist, it is well settled that negotiated settlements of boundary disputes are preferred over litigation in this Court. In *Colorado* v. *Kansas*, 320 U.S. 383 (1943), the Supreme Court succinctly stated a policy of caution in exercising jurisdiction over suits such as the one proposed:

> The reason for judicial caution in adjudicating the relative rights of states in such cases is that, while we have jurisdiction of such disputes, they involve the interests of quasi-sovereigns, present complicated and delicate questions, and, due to the possibility of future change of conditions, necessitate expert administration rather than judicial imposition of a hard and fast rule. Such controversies may appropriately be composed by negotiation and agreement, pursuant to the compact clause of the Federal constitution. We say of this case, as the court has said of interstate differences of like nature, that such mutual accommodation and agreement should, if possible, be the medium of settlement, instead of invocation of our adjudicatory power. *Id.* at 392; see, also, *Nebraska* v. *Wyoming*, 325 U.S. 589 (1945).

The reluctance of the Supreme Court to impose a judicial remedy before other settlement efforts of the parties have proved

fruitless was also well stated in *Hinderlider* v. *La Plata River & Cherry Creek Ditch Co.*, 304 U.S. 92 (1938):

> [R]esort to the judicial remedy is never essential to the adjustment of interstate controversies, unless the States are unable to agree upon the terms of a compact. . . . The difficulties incident to litigation have led States to resort, with frequency, to adjustment of their controversies by compact, even where the matter in dispute was a relatively simple one of a boundary. In two such cases this Court suggested "that the parties endeavor . . . to adjust their boundaries." *Id.* at 105.

II.

CONCLUSION

In light of the absence of an unambiguous dispute, the willingness of the parties to reach a negotiated compact or agreement to resolve any dispute that arises, and the need to avoid unnecessarily burdening this Court's already crowded docket, the State of Arkansas respectfully requests that plaintiff's motion for leave to file complaint be denied.

Respectfully submitted,

BILL CLINTON
Attorney General
State of Arkansas
JUSTICE BUILDING
LITTLE ROCK, ARKANSAS 72201

FRANK B. NEWELL
Deputy Attorney General

ELLEN B. BRANTLEY
Assistant Attorney General
Attorneys for Defendant

SUPREME COURT, U. S.
FILED
NOV 29 1978
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1977

No. 77 Original

STATE OF TENNESSEE ..... *Plaintiff*

vs.

STATE OF ARKANSAS ..... *Defendant*

ANSWER OF STATE OF ARKANSAS TO COMPLAINT OF STATE OF TENNESSEE

BILL CLINTON
Attorney General
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REQ. No. 78-5271 70 COPIES

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1977

No. 77 Original

STATE OF TENNESSEE ..... *Plaintiff*

vs.

STATE OF ARKANSAS ..... *Defendant*

ANSWER OF STATE OF ARKANSAS TO COMPLAINT OF STATE OF TENNESSEE

ANSWER

The State of Arkansas, for its answer to the complaint of the State of Tennessee, states:

I.

It admits so much of paragraph I of plaintiff's complaint as pertains to 28 U.S.C. § 1251(a)(1) (1948) and denies all other allegations of paragraph I.

II.

It admits the allegations of paragraph II of plaintiff's complaint.

III.

It admits the allegations of paragraph III of plaintiff's complaint.

IV.

It admits the allegations of paragraph IV of plaintiff's complaint.

V.

It admits the allegations of paragraph V of plaintiff's complaint.

VI.

It is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph VI of plaintiff's complaint and, therefore, denies each and every allegation of paragraph VI.

VII.

It is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph VII of plaintiff's complaint and, therefore, denies each and every allegation of paragraph VII.

VIII.

It is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph VIII of plain-

tiff's complaint and, therefore, denies each and every allegation of paragraph VIII.

IX.

It is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph IX of plaintiff's complaint and, therefore, denies each and every allegation of paragraph IX.

X.

It is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph X of plaintiff's complaint and, therefore, denies each and every allegation of paragraph X.

XI.

It is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph XI of plaintiff's complaint and, therefore, denies each and every allegation of paragraph XI.

XII.

It admits the first sentence and subsequent citations of authority in paragraph XII of plaintiff's complaint. It denies the second sentence of paragraph XII of plaintiff's complaint. It admits the last sentence of paragraph XII of plaintiff's complaint.

XIII.

It admits that the exact location of the boundary line

between the States of Arkansas and Tennessee is significant to both states. It denies every other allegation of paragraph XIII of plaintiff's complaint.

XIV.

It denies all allegations of plaintiff not specifically admitted herein.

XV.

As an affirmative defense defendant states that plaintiff's conceded long acquiescence in Arkansas's possession of the property in issue and its exercise of dominion and sovereignty over it bars this action and is conclusive of Arkansas's title.

WHEREFORE, defendant, the State of Arkansas, prays that the Court dismiss plaintiff's complaint, award defendant costs, and order such other and further relief as the Court deems proper.

Respectfully submitted,

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State of Arkansas
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Supreme Court, U. S.
FILED
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MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1977

No. 77 ORIGINAL

STATE OF TENNESSEE,
Plaintiff,

vs.

STATE OF ARKANSAS,
Defendant.

REPLY TO RESPONSE TO MOTION AND BRIEF IN OPPOSITION TO MOTION FOR LEAVE TO FILE COMPLAINT

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IN THE

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The State of Tennessee, by and through its Attorney General, Brooks McLemore, for its reply to defendant's response in opposition to plaintiff's motion for leave to file complaint, states:

I

Contrary to defendant's assertion that a dispute as to the boundary line between the parties does not exist, plaintiff respectfully directs this Honorable Supreme Court's attention to

Exhibit "A" annexed to plaintiff's Motion for Leave to File Complaint which clearly shows the State of Arkansas claims jurisdiction and control over a portion of the lands involved in this controversy. Similarly, as referred to in paragraph XII of plaintiff's Complaint, Arkansas has claimed dominion over all the lands in dispute in *Smith v. Smith*, United States District Court, Eastern District of Arkansas, Jonesboro Division, No. J-702-38 (April 4, 1973).

Therefore, the allegation by Arkansas that the defendant has not had time to even hire an expert to determine the validity of plaintiff's claim is irrelevant and immaterial.

II

A real and justiciable controversy ripe for adjudication clearly exists. Plaintiff submits the protracted history of this dispute, defendant's continuous claim to the disputed area, the need to avoid the multiplicity of suits involving title to these lands, and the necessity of fixing a boundary line for purposes of taxation, all dictate this Honorable Supreme Court assume jurisdiction over this matter pursuant to Article III, Section 2, Clause 1 of the Constitution of the United States and the provisions of 28 U.S.C. § 1251(a)(1) (1948).

III

Plaintiff has not received any indication from defendant that an interstate agreement or compact resolving this boundary dispute is possible. In addition, the cases cited in defendant's brief in support of the proposition that negotiated settlements are preferred over litigation all involve water rights and proprietary interest in interstate waterways, rather than boundary disputes between states where same are formed, in whole or in part, by navigable waterways.

With reference to one of the cases cited by defendant, *State of Nebraska v. State of Wyoming*, 325 U.S. 589 (1945), even though this Honorable Supreme Court was reluctant to undertake the intricate and complex task of apportioning the waters of an interstate river, this Honorable Supreme Court noted a genuine controversy existed between the states and determined itself duty-bound to exercise the jurisdiction over same as entrusted in this Supreme Court by the Constitution. *Id.* at 616.

WHEREFORE, the State of Tennessee respectfully prays that this Honorable Court grant plaintiff's motion for leave to file complaint and take original jurisdiction of this controversy.

Respectfully submitted

BROOKS McLEMORE
Attorney General

ROBERT J. AMES
Assistant Attorney General

ROBERT B. LITTLETON
Assistant Attorney General

Proof of Service

The undersigned, Assistant Attorneys General for the State of Tennessee and members of the Bar of the Supreme Court of the United States, hereby certify that three copies of the foregoing Reply to Response to Motion and Brief in Opposition to Motion for Leave to File Complaint on behalf of the plaintiff herein have this day been forwarded by first class, postage paid mail, to the following: Honorable William J. Clinton, Attorney General of the State of Arkansas, Justice Building, Little Rock, Arkansas 72201; Honorable Frank B. Newell, Deputy Attorney General, Justice Building, Little Rock, Arkansas 72201; and Honorable Ellen B. Brantley, Assistant Attorney General, Justice Building, Little Rock, Arkansas 72201, counsel for the defendant, this . . . day of May, 1978.

ROBERT J. AMES
Assistant Attorney General
State of Tennessee

Assistant Attorney General
ROBERT B. LITTLETON

Office-Supreme Court, U.S.
FILED
APR 13 1981
ALEXANDER L. STEVAS,
CLERK

IN THE

Supreme Court of the United States

October Term, 1977

No. 77, Original

THE STATE OF TENNESSEE,

Plaintiff,

vs.

THE STATE OF ARKANSAS,

Defendant.

REPORT OF SPECIAL MASTER

EARL R. LARSON
Senior U.S. District Judge
Minneapolis, Minnesota
Special Master

1981—Northwest Brief Printing Co., 316 Chicago Avenue, Minneapolis 55415—338-5078

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Introductory Statement of the Case

This original action involves a dispute between the States of Tennessee and Arkansas over the location of a small portion of their common boundary on the Mississippi River. The area in question is about 30 to 40 miles upstream from Memphis, Tennessee, near the towns of Osceola and Luxora, Arkansas, and Golddust, Tennessee.

The uncertain boundary is the result of a shift in the Mississippi River's course in this area sometime in the first quarter of this century. The passage of time since this shift creates problems in accurately placing the boundary. Determination of the boundary is further complicated by the variable presence of several islands in the contested boundary locale.

Tennessee filed the complaint against Arkansas in 1978. The essence of Tennessee's position is that the Mississippi River's shift was avulsive. Arkansas answered, denying that the change in course was avulsive, and raising the affirmative defense of acquiescence.

This Special Master was appointed to receive evidence and to formulate a recommendation for the Court. Trial was held from January 22-24, 1980, and from April 21-23, 1980. The Special Master has carefully considered the evidence and the briefs submitted by each side, and makes the following Findings of Fact, Conclusions of Law and Recommendation.

IN THE

Supreme Court of the United States

October Term, 1977

No. 77, Original

THE STATE OF TENNESSEE,

Plaintiff,

vs.

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Defendant.

REPORT OF SPECIAL MASTER

FINDINGS OF FACT

Preface

The Mississippi River is a meandering river. The main channel of the river lies in a broad alluvial valley. Through various natural processes the position of the main channel shifts frequently within this valley. As the river developed into an important avenue of navigation and commerce, stabilization of the main channel became a major concern. The United States government, largely through the Army Corps of Engineers, has taken numerous steps to limit the wandering of the main channel. In attempting to discern the main channel's location (usually also the main course of navigation) at any given time, consideration must be given to the effects of both natural forces and human interventions.

Maps do not do justice to the true scale of the river. The larger island areas are miles long. The river is extremely wide. During high water or floods the river can erase or build a very large land mass in a matter of days. The river's water level is very changeable. At low water many bars may protrude from the river's bed, islands may seem to increase greatly in size because of exposed adjoining sand and mud flats, and chutes where water other times may flow are now completely dry and passable by foot. At higher water stages the bars are no longer visible, only the more elevated portions of islands remain above the water surface and water flows in the chutes, dividing what formerly seemed to be a single piece of land. At flood stages, the river may completely submerge all land masses within its banks.

An introductory survey will help establish familiarity with the geography and nomenclature of the local river area. The area of the Mississippi River where the disputed boundary lies is known as Plum Point Reach. It has historically been one of the most troublesome sections of the river; noted for snags, sandbars and inadequate depth in the channels. The river's extreme width here is a factor in the various navigation difficulties. The Mississippi River Commission is a sub-body of the Corps of Engineers and since about 1880 it has been responsible for maintaining good navigation conditions and preventing floods on the Mississippi. Because of the numerous problems in Plum Point Reach, it was an early and constant target for improvement works. Dredging, dikes, dams and revetments were used in an attempt to tame this stretch of the river.

Plum Point Reach begins just below Ashport Bend and

Island No. 26 or Forked Deer Island. At the upstream end of Plum Point Reach the river made a sharp turn to the right into Fletcher's Bend. Luxora, Arkansas, was located near the center of this bend on the right descending bank. Further down on the right descending bank is Osceola, Arkansas. At one time several bars were located in the river in front of Osceola. Still lower down near the Arkansas shore was Bullerton Towhead.

Several island masses have been situated in the Plum Point Reach. They have been given a plethora of names. The two largest island areas are Elmot Bar and Island 30. These names were used by the Mississippi River Commission and are commonly found on maps of the Reach. Originally these land masses lay to the left of the main channel, close to the left descending bank in Tennessee. Elmot Bar is the island nearest the upper end of Plum Point Reach. Island 30 was just below and to the descending left of Elmot Bar, usually separated from it by only a narrow stretch of water.

Golddust, Tennessee is located at the head of Plum Point Reach along the left descending bank. Below Golddust is the Keyes Point area. The channel between the Tennessee shore and the Elmot Bar and Island 30 masses was known as the Golddust Chute or the Island 30 Chute. During the relevant time period, several land masses have been detached from the Keyes Point area by human or natural river actions. The most prominent of these are Kate Aubrey Towhead and the two Keyes Point Cutoffs. These masses have generally migrated across the river and consolidated with the Elmot Bar-Island 30 land area.

A. The Movement of the River's Main Channel

1. In the early 1880's when the Mississippi River Commission first began its attempt to improve the Plum Point Reach, the main channel of the river was toward the right descending bank, against the Arkansas shore. To the left of the main channel, close to the Tennessee shore, lay two large island areas. Elmot Bar and Island 30. The secondary or chute channel between Elmot Bar and Island 30 and the Tennessee bank was fairly sizable. It was referred to as the Golddust Chute. By 1883 the Commission had placed numerous dikes in this chute in an attempt to stem further growth and to keep the main river flow in the Fletcher's Bend channel. These works are an indication that there was already a significant danger that the river would shift its main flow into the chute channel. Further down in the Reach the river is attacking and eroding the Osceola Bars. Several dikes and revetments have been constructed to inhibit further erosion and protect the town of Osceola from the direct attack of the river.

The main track of navigation at this time was in the deepest part of the main channel, or the Fletcher's Bend channel. The navigation lights were placed along the Arkansas shore in Fletcher's Bend. Several landings were located on this right descending bank.

(Testimony of Dr. Charles Kolb, p. 667-671; testimony of Austin Smith, p. 840-862; Tennessee exhibits 43A & B, 44, 45, 46, 71, 72, 73, 75, 76)

2. Looking at the time period from 1883 to the early 1900's, there does not appear to have been much change in the location of the important geophysical features. Al-

though there continues to be a threatened switch of the river's main channel, the Commission's channel contraction works have been generally successful. These works included a large stone dam built in 1893-4 across the Golddust Chute from Elmot Bar to the Tennessee shore, and dikes built in 1889-90 in the Elmot Bar-Island 30 and Island 30-Tennessee mainland chutes.

There has been some change in the shape of both Elmot Bar and Island 30 through the processes of erosion and deposition of various materials. The progenitor of Kate Aubrey Towhead appears to be forming just off the left descending bank below Golddust.

There is continued erosive attack on the right descending bank and more revetments have been placed to protect the towns and levees along the Arkansas shore.

The main track of navigation continues to be in the Fletcher's Bend channel.

(Testimony of Dr. Charles Kolb, p. 675-684; testimony of Austin Smith, p. 877-879; Tennessee exhibits 47-50, 77A & B)

3. Looking at the time period up to about 1912, we see that the Commission's improvement works began to deteriorate and the stability of the main channel ended. The dikes which had been placed at the head of Golddust Chute were flanked by erosion on the Tennessee bank. Erosion at the head of Elmot Bar also made it easier for the river's flow to be directed through the chute channel. The rock dam in the chute was breached and a large portion of it was washed out, as were a number of the dikes.

The revetments on the right descending bank in Fletcher's Bend prevented further migration of the river in

that direction. The presence of old clay channel plugs along the Arkansas shore also slowed erosive processes in the bend channel. The inability of the river to move into the Arkansas shore increased the likelihood of a switch into the chute channel. In addition, incipient changes in the river's flow around Forked Deer Island affected the hydrodynamics of the downstream flow into Plum Point Reach. More water was being directed into the Golddust Chute channel.

The cumulative effect of these factors was to cause the current in the chute channel to at times be greater and stronger than that in Fletcher's Bend. For example, the 1901 Mississippi River Commisson Report states that the chute channel became the main channel in 1900, most of the water apparently flowing back to the Arkansas bank through the Elmot Bar-Island 30 chute. The 1901 Report goes on to state that even though the larger water flow was in the Golddust Chute, navigators continued to prefer the bendway channel because it had the better course and was safer. The navigation lights remained along the right descending bank.

For the next few years large volumes of water went through the chute channel, although vessels still traveled through the Fletcher's Bend channel, which always contained adequate water flow and usually held the main current. The Commission's ongoing works program prevented a complete switch of the main channel, but could not keep Golddust Chute from continuing to widen. The Island 30-Elmot Bar and Island 30-Tennessee shore chutes were also enlarging. The greater water flow through these chutes heightened the erosive attack on the Oseola Bars and Bullerton Towhead. Although the Osceola Bars

were eradicated, the main shoreline in front of Osceola was stabilized thrugh the use of revetments.

(Testimony of Dr. Charles Kolb, p. 684-689: testimony of Austin Smth, p. 880-891; Tennessee exhibits 51A & B, 52, 53, 78, 79, 80, 81 coll., 82 coll.)

4. 1912 through 1919 were crucial years. Significant floods occurred in this interval and several changes were recorded in the physical features of the area. During this time the river shifted almost entirely out of Fletcher's Bend and that channel began to attenuate and fill with sediment.

The river's flow had shifted around Forked Deer Island and increasing water was fed into the chute channel at Plum Point Reach. The 1912 Mississippi River Commission Report states that by that time the low water flow was continually stronger in the Golddust and Island 30 chute channel than in Fletcher's Bend.

During flood flows the maximum surface velocity of the river in a bend tends to shift from its normal location on the outside of the bend, to the inside. In Plum Point Reach, this meant that during the frequent floods at this time the strongest water went through the chute channel. Each successive flood would further enlarge this channel. The final complete switch of the river's main channel to the Golddust Chute occurred during a flood in 1916-17.

The entire upstream area of Plum Point Reach migrated southward in this time period. The head of Elmot Bar was heavily eroded and there were large accretions to the opposing bank in upper Fletcher's Bend. There was much caving of the Tennessee shore near Golddust, so that the chute channel actually began further downstream near Keyes Point.

Although the head of Elmot Bar was eroding, it grew on the downstream end and toward the Arkansas shore. Island 30 also lengthened downstream. These two islands retained a clear identity throughout this interval. On maps they appear to have migrated across the river. This appearance was caused by the widening of the chute channel and the narrowing and sedimentation of the old main channel.

Although more water was flowing in the chute channel, navigation stayed in the bend channel as long as there was sufficient water. The light lists indicate that the lights remained in the Fletcher's Bend channel until 1916. The 1917 light list does not show any lights in this old channel. Beginning in 1915 lights were placed in the chute channel area. In 1915-16 both channels were probably used for navigation, but by 1917 the main track of navigation was clearly in the chute channel and it remained there.

(Testimony of Dr. Charles Kolb, p. 689-699; testimony of Austin Smith, p. 891-896; Tennessee exhibits 54, 55, 56, 81 coll., 82 coll.)

5. In the years after the channel switch, the upper part of the old Fletcher's Bend channel began to fill rather rapidly with sediment. Accretions to bars just above the entrance to this channel narrowed it significantly, as did westerly accretions to Elmot Bar. In 1931 a dike was placed across the lower end of this old channel where it joined Elmot Bar. By 1929-30 this channel had filled to the point that it would not carry low water flows, and had effectively died.

The accretions to the bars just north of the mouth of the old main channel eventually extended down far

enough to merge with Elmot Bar. These bars and their accretions are undisputed Arkansas territory. This accounts for that portion of the boundary which cuts across the upper end of Elmot Bar. Kate Aubrey Towhead migrated across the chute channel in this time period and became adjoined to Elmot Bar.

(Testimony of Dr. Charles Kolb, p. 699-705; testimony of Austin Smith, p. 897-907; Tennessee exhibits 57, 58, 59, 81 coll., 82 coll., 83, 84, 85A, B & C, 86)

6. The lower part of the old Fletcher's Bend channel, below the foot of Elmot Bar, continued to carry good water flow into the 1920's and was even used occasionally for navigation. A strong current between Elmot Bar and Island 30 was partly responsible for keeping the lower portion of the old bendway channel from filling.

Island 30 was eroded at its head by the current in the chute between it and Elmot Bar, but the Island continued to enlarge through accretions to its western and southern edges. The head of Island 30 was reveted in about 1931-32 to prevent further erosion and to limit flow in the lower old channel.

A point bar began building at Keyes Point in the mid-1920's. As this bar continued to grow it became a nuisance to navigation. The Commission dredged through the bar, creating Keyes Point Cutoff No. 1. This piece of land migrated across the river through erosion and accretion and eventually lodged in the lower area of Elmot Bar. A second point bar developed at Keyes Point. This bar was also dredged and resulted in the Keyes Point Cutoff No. 2. This cutoff also migrated across river, eventually merging with the Elmot Bar-Island 30 land mass in about 1940. After these improvements in the chute chan-

nel, the lower portion of the old bendway channel began to attenuate. The channel was heavily filled with sediment by 1948 and by 1963 this entire portion of the channel had died.

Currently the main river channel has migrated westward at the foot of Island 30 and is actually cutting into the Arkansas bank and back up into the area of the old channel. Revetments at the foot of Island 30 and on the Arkansas shore may inhibit any further westward and northerly movement of the main channel into the boundary channel.

(Testimony of Dr. Charles Kolb, p. 706-714; testimony of Austin Smith, p. 907-930, 952-966; Tennessee exhibits 60-68, 87, 88 coll., 89, 90 coll., 91, 92A & B, 93)

In making these findings I have given great weight to the light lists, the maps and the testimony of Dr. Charles Kolb and Mr. Austin Smith, both of whom displayed an excellent grasp of the river's dynamics and history.

B. Acquiesence in a Boundary or Exercise of Sovereignty Over the Disputed Lands

7. With the consent of Congress, Arkansas and Tennessee have arranged to exercise concurrent criminal jurisdiction over the lands lying in the Mississippi River. In practice this usually means that the State the land masses are closest to has taken responsibility for enforcing the laws. In the recent past, therefore, Arkansas has handled law enforcement in the Elmot Bar-Island 30 area. Because there has not been anyone actually residing on the islands for a number of years, there has been little need for the exercise of criminal or civil jurisdiction.

(Testimony of George Ford, p. 12-30; testimony of Terry Hanners, p. 32-50; Tennessee exhibit 1)

8. The highway maps of both states have usually indicated that the boundary line in Plum Point Reach was indefinite or approximate. United States Geographical Survey, tax assessment and other maps show the same thing. These maps generally have a dashed boundary line following the old channel in Fletcher's Bend along the Arkansas shore.

(Testimony of Clarence Harmon, p. 510-528; testimony of Ben Tolar, p. 529-567; Tennessee exhibits 30-39)

9. Both states claim to have taxed the island areas for varying lengths of time. Following the main channel change which brought the islands close to Arkansas, residents of that state obtained "island deeds" or made other claims to some of the Elmot Bar-Island 30 area. Tennessee was able to show some taxation of these areas from a time prior to that in Arkansas, although this taxation became inconsistent as to some of the area after the islands moved away from the Tennessee bank. The varying size of the islands and the multitude of names given them added further confusion to taxation efforts.

(Testimony of James Tompkins, p. 51-164; testimony of Eileen O'Neal, p. 175-188; testimony of Vernice Crain, p. 299-411; testimony of Floyd Starnes, p. 413-428; testimony of Charles Crail, p. 430-508; Arkansas exhibits A, A-1, A-2, A-3; Tennessee exhibits 4, 10, 11, 12 coll., 13 coll., 15, 16, 17-28)

10. References in various works discussing and describing this area either refer to the state ownership of the islands as uncertain or report that although the lands appear to be in Arkansas, they are actually the property of Tennessee.

See, e.g., Bragg, M., Historic Names & Places on the Lower Mississippi River 54-58 (1977); Elliott & Jackson, I & II The Improvement of the Lower Mississippi River 262-272 (1932).

11. Tennessee has not explicitly recognized or knowingly acquiesced in the exercise of sovereignty over the disputed area by Arkansas. When the federal court's ruling in *Smith v. Smith*, No. J-70-C-38 (E.D. Ark.) that the land was located in Arkansas was brought to the attention of Tennessee state officials, they promptly investigated and initiated this proceeding. There is no evidence to clearly establish that Tennessee was previously aware that Arkansas claimed to own the territory or that Tennessee accepted that claim. The case of *Conway v. Shuck*, 157 S.W.2d 777 (Ark. 1942) was a suit between two private parties about the ownership of Keyes Point Cutoff No. 1. The Arkansas Supreme Court stated that its ruling could not be binding on Tennessee, and that the case was not in any way determinative of the boundary location. The lower Arkansas court in this case, which heard the testimony first-hand, ruled that the land originated on the Tennessee side of the River and was Tennessee territory.

In fact, there has never been a clear Arkansas claim to a *boundary* in the middle of the current main channel, or to any other possible boundary. Arkansas highway officials apparently treated the boundary in the river as uncertain. Local Arkansas officials knew through dealings with Ms. Jeanette Spann that she claimed title through Tennessee to some of the island area. Arkansas Game and Fish officials obtained flowage easements from Ms. Spann, knowing she believed the land to be in Tennessee and was paying taxes to Tennessee.

(Testimony of James Tompkins, p. 82-92; testimony of Jeanette Spann, p. 254-260; testimony of Vernice Crain, p. 302-306; Arkansas exhibits B, C, D; Tennessee exhibit 8)

CONCLUSIONS OF LAW

1. The Supreme Court has jurisdiction of this action by virtue of Article III § 2 of the United States Constitution, and 28 U.S.C. § 1251(a).

2. The Supreme Court has previously ruled that the boundary between Arkansas and Tennessee is the thalweg, or middle of the main channel of navigation, of the Mississippi River as it existed at the time of the Treaty of Peace between Britain and the United States in 1783, subject to subsequent river action which might move the location of that thalweg. *Arkansas v. Tennessee*, 397 U.S. 88, 89 (1970); *Arkansas v. Tennessee*, 246 U.S. 158, 169, 177 (1918). This is in accord with the general rule on the location of state boundaries in interstate rivers. *See Mississippi v. Arkansas*, 415 U.S. 289, 290 (1974), *Iowa v. Illinois*, 147 U.S. 1, 7-8 (1893).

The thalweg changes frequently on meandering rivers like the Mississippi. Rules have evolved to establish the boundary when these changes occur. If the thalweg moves as a result of the processes of erosion and accretion, the boundary will move with the thalweg. *Arkansas v. Tennessee*, 246 U.S. 158, 173 (1918); *Missouri v. Nebraska*, 196 U.S. 23, 34-6 (1904). Erosion and accretion are usually gradual changes in which the river's current will eat into and wash away land at one location on the river and deposit sand, mud and other alluvion at another place. While these changes are generally imperceptible, on

large and powerful rivers such as the Mississippi, vast areas of land can be eroded or built up in a matter of days or even hours. *See, e.g., Kansas v. Missouri,* 322 U.S. 213, 221 (1944); *Oklahoma v. Texas,* 260 U.S. 606, 637 (1923); *Ussery v. Anderson-Tully Co.,* 122 F. Supp. 115, 119 (E.D. Ark. 1954).

A second major type of river action is an avulsion. Avulsions are generally rapid shifts of the river from one channel to another. Perhaps the crucial characteristic of an avulsion is that the river's course changes with respect to an identifiable chunk of land. *See Missouri v. Nebraska,* 196 U.S. 23, 35 (1904); *Nebraska v. Iowa,* 143 U.S. 359, 366 (1892); *Uhlhorn v. United States Gypsum Co.,* 366 F.2d 211, 219 (8th Cir. 1966), *cert. denied,* 385 U.S. 1026 (1967). Examples of avulsive actions are neck and chute cutoffs. *See* Tennessee exhibit 42. *Arkansas v. Tennessee,* 397 U.S. 88 (1970), involved a Mississippi River avulsion very similar to the change at issue in this case.

When the main channel moves because of an avulsion, the interstate boundary does not switch to the new navigation channel, but remains in the location of the former thalweg. *Missouri v. Nebraska,* 196 U.S. 23, 35 (1904); *Nebraska v. Iowa,* 143 U.S. 359, 361 (1892). If the old channel still carries some water flow, the boundary might wander as a result of erosion and accretion in that channel, but once the channel becomes stagnant or water flow ceases, the boundary becomes fixed in the middle of this old channel. *Arkansas v. Tennessee,* 397 U.S. 88, 89 (1970); *Oklahoma v. Texas,* 268 U.S. 252, 256 (1925).

Changes in the thalweg may result from or be affected

by human intervention. When this happens, the usual rules are still applied. If a sudden shift in the thalweg is caused by artificial means, it is treated as any other avulsion. *Arkansas v. Tennessee*, 246 U.S. 158, 173 (1918); *Whiteside v. Norton*, 250 F. 5, 12-13 (8th Cir. 1913), *cert. denied*, 232 U.S. 726 (1914); *Anderson-Tully Co. v. Walls*, 266 F. Supp. 804, 808 (N.D. Miss. 1967); *see Bonelli Cattle Co. v. Arizona*, 414 U.S. 313, 327 (1973).

A final rule of relevance here is the "island rule," which states that even if the thalweg migrates slowly from one side of an island to the other, the boundary remains in the original channel. Contrary to the arguments of Arkansas, this is a long-recognized and well-established rule. *Kansas v. Missouri*, 322 U.S. 213, 229 (1944); *Iowa v. Illinois*, 147 U.S. 1, 9 (1893); *Missouri v. Kentucky*, 78 U.S. (11 Wall.) 395, 401 (1870).

The burden of proving the nature of the change in the location of the thalweg falls upon the complainant, Tennessee. *Mississippi v. Arkansas*, 415 U.S. 289, 290 (1974); *Kansas v. Missouri*, 322 U.S. 213, 228 (1944).

The thalweg, and the boundary between Arkansas and Tennessee, was originally close against the Arkansas bank in Fletcher's Bend and lower Plum Point Reach. The progenitors of current Elmot Bar and Island 30 were located on the Tennessee side of the boundary. The river's shift into a new channel between these land masses and the Tennessee shore was an avulsive shift, essentially in the nature of a chute cutoff. The boundary therefore remained in the old main channel and has since become fixed there as shown by Tennessee exhibits 92A and 93. Elmot Bar, Island 30 and various accretions to them are Tennessee land.

Arkansas argues that the change could not be avulsive because it took place over several years. It is true that the area was in a state of flux for a number of years. The actual shift of the river's main channel of navigation is difficult to pin down to a particular moment because it is not totally linked to objective natural processes, but depends also on the whims of human navigators, who are influenced by factors other than just the location of the deepest water channel. If we did look only at the place of deepest and strongest water flow, the change did occur very rapidly, probably in the course of one flood. It is also impossible to ignore the effect of the Commission's works. In the absence of the various dams and dikes in the Golddust Chute. the channel shift would have been quicker and would have occurred much earlier. Just as the artificial causation of an avulsion does not change the operation of the usual rule, so too, the artificial delay of an avulsive change should not be allowed to deprive one state of land that would otherwise remain part of its dominion under the avulsion rule.

The key factor is the thalweg's shift around identifiable land which remained after the channel change. The river did not gradually erode across the islands, eradicating them as it moved. Rather it switched from one channel to a different channel on the other side of this land. Any shift around identifiable land should be viewed as avulsive in nature. *See Uhlhorn v. United States Gypsum Co., supra* at 219; *Commissioners v. United States*, 270 F. 110, 113-14 (8th Cir. 1920), *app. dism'd*, 260 U.S. 753 (1922); *Davis v. Anderson-Tully Co.*, 252 F. 681, 685 (8th Cir. 1918). This reasoning is congruent with the rationale for the avulsion exception to the thalweg boun-

dary rule, which is based on notions of stability of ownership. *Bonelli Cattle Co. v. Arizona*, 414 U.S. 313, 327 (1973); *Arkansas v. Tennessee*, 310 U.S. 563, 570-71 (1940).

The island rule has a similar basis and its application yields the same result here, even if my finding of avulsive action is incorrect. The maps and testimony presented by Tennessee overwhelmingly proved that Island 30 and Elmot Bar had a continuous identity. Obviously they are not in the exact same geodetic position they were thirty, fifty or eighty years ago. An aerial time-lapse movie, however, would show that they have been the identifiable, everpresent center of accretive activity which has moved in a westerly and southerly direction, filling in the old channel. That these islands may have been submerged during floods is irrelevant. All islands in the river are submerged at flood stage. These islands were not washed away and always reappeared after the floods in essentially the same position.

The islands were originally located on the Tennessee side of the thalweg. The islands and their accretions continue to belong to Tennessee following the shift of the thalweg around them.

3. Arkansas raised the affirmative defense of prescription and acquiesence, which it has the burden of proving. Arkansas attempted to meet this burden by showing that it had exercised law enforcement powers in the area, that it had assessed and taxed the land for a long period of time, and that Tennessee was aware of Arkansas' claim of sovereignty but did nothing to contest that claim.

I would first note that Arkansas has never claimed a

particular *boundary*. This case is distinguishable from cases such as *California v. Nevada*, 100 S. Ct. 2064 (1980), or *Virginia v. Tennessee*, 148 U.S. 503 (1893). Arkansas' own maps show a boundary line in the old Fletcher's Bend channel, although that boundary is usually labeled "indeterminate" or "indefinite." *See* Tennessee exhibit 38. This could be interpreted to mean that Arkansas officials recognized that the boundary remained in Fletcher's Bend, although it was indefinite because it might wander slightly until the channel died. The best that can be said for Arkansas is that both states recognized that the boundary in Plum Point Reach was unsettled. Tennessee's maps have consistently showed the boundary to be along the old channel. In view of the history of litigation between these states over their boundary in the Mississippi River, neither would be likely to acquiesce in the establishment of a certain boundary by the other. *See, e.g., New Jersey v. Delaware*, 291 U.S. 361, 377 (1934).

Although Arkansas has a better argument in regard to its claimed exercise of dominion over the island masses, here too it failed to prove prescription and acquiesence. These doctrines demand a showing of open, long-continued and uninterrupted possession of territory by one state, coupled with inaction by the other state, even though it is aware of the adverse claim. *Michigan v. Wisconsin*, 270 U.S. 295, 308 (1926); *Louisiana v. Mississippi*, 202 U.S. 1, 53 (1906). Arkansas has shown neither sufficient acts of jurisdiction, nor acquiesence by Tennessee.

The disputed area has no current residents and only infrequently has anyone actually lived on these island masses. The only activity undertaken with any regularity on

this land has been farming. Therefore, neither state has had much reason for providing any services or exercising any jurisdiction in the area, nor was there any reason for the states to pay much attention to what was happening on the islands.

Most of the usual indicia of prescription and acquiesence simply do not exist. *See Arkansas v. Tennessee*, 310 U.S. 563, 567-68 (1940).

Because there are no residents on the land, the effects of a decision about which state the land is in will be negligible. It will not change who maintains the roads, or runs the schools or where people vote, because none of these activities exist. It may affect ownership of the land and the incidents thereto, but in this regard there is a potential effect on citizens of both states, because there are putative title-holders in each state.

The acts of prescription asserted by Arkansas are minimal. The exercise of law enforcement jurisdiction cannot be weighed as a factor because the states have agreed to concurrent jurisdiction. It would be illogical to then suggest that the fact that only one state has exercised that jurisdiction gives it the land. Both states have assessed and taxed the land. Tennessee's taxing activity dates back further than Arkansas'. Arkansas' taxing authorities have attempted to consistently tax the areas, but they have also been aware of the fact that at least one landowner paid taxes in Tennessee. When the federal court lawsuit in 1970 came to Tennessee's attention, the state acted promptly to secure a determination of the boundary. The Arkansas Supreme Court in *Conway v. Shuck* did not even pretend to locate the boundary or determinine state ownership of the land. There were ac-

tions by Arkansas officials following this decision which are not consistent with the argument that the state claimed this land. In short, I do not find that there have been adequate acts of dominion by Arkansas, nor do I find that Tennessee had given up any claim to the land and acquiesced in Arkansas' sovereignty.

This land was originally in Tennessee. It is a solemn and momentous act to decide that land formerly in one state now forms part of the dominion of another. The avulsion and prescription rules share a common purpose —guaranteeing stability of ownership, whether that of individuals or of states. The prescription rule supplants the rule of avulsion only where it would yield a more equitable result and do a better job of advancing the underlying policies of the various boundary rules. I do not believe it should be applied here.

RECOMMENDATIONS

Your Special Master recommends that:

1. The boundary between the States of Tennessee and Arkansas in the disputed area be established as shown on Tennessee exhibit 92A, included in this Report as Appendix E, and as geodetically described in Tennessee exhibit 93, included in this Report as Appendix D.

2. The costs to date be taxed one-half to the plaintiff and one-half to the defendant; and that no costs be taxed for the services of Earl R. Larson, Special Master.

Respectfully submitted,

EARL R. LARSON
Special Master

APPENDIX

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Appendix A

CIVIL DOCKET CONTINUATION SHEET

PLAINTIFF	DEFENDANT	DOCKET NO. 77-Orig.
State of Tennessee	State of Arkansas	PAGE 1 OF 3 PAGES

DATE	NR.	PROCEEDINGS
1-8-79	1	Appointment as Special Master
1-16-79	2	Oath of Special Master
8-1-79	3	Stipulations of Parties 1-7
9-28-79	4	Tennessee's request for admissions
9-28-79	5	Tennessee's exhibit list
10-1-79	6	Arkansas' exhibit list
10-22-79	7	Arkansas' response to Tennessee's request for admissions
10-30-79	8	Tennessee's objections to Arkansas' exhibits
10-31-79	9	Arkansas' objections to Tennessee's exhibits
11-5-79	10	The first amendment to the stipulations of the parties
12-14-79	11	Tennessee's pretrial memorandum
12-14-79	12	Arkansas' pretrial memorandum
1-2-80	13	Pretrial order
1-22-80	14	Stipulation of the Parties 8
7-11-80	15	Tennessee's post-trial brief (loose in this folder)
7-11-80	16	Tennessee's proposed findings of fact, conclusions of law and recommendation
7-11-80	17	Arkansas' post-trial brief
7-23-80	18	Tennessee's reply brief
7-24-80	19	Arkansas' reply brief
1-22-80	20	Minutes of Proceedings, January 22, 1980
1-23-80	21	Minutes of Proceedings, January 23, 1980
1-24-80	22	Minutes of Proceedings, January 24, 1980
4-21-80	23	Minutes of Proceedings, April 21, 1980
4-22-80	24	Minutes of Proceedings, April 22, 1980
4-23-80	25	Minutes of Proceedings, April 23, 1980

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CIVIL DOCKET CONTINUATION SHEET

PLAINTIFF	DEFENDANT	DOCKET NO. 77-Orig.
State of Tennessee	State of Arkansas	PAGE 2 OF 3 PAGES

DATE	NR.	PROCEEDINGS	
1-22-80	26	Transcript of Proceedings, vol. I, pages 1-111	(The transcript is contained in a box)
1-22-80	27	Transcript of Proceedings, vol. II, pages 112-220	
1-23-80	28	Transcript of Proceedings, vol. III, pages 221-350	
1-23-80	29	Transcript of Proceedings, vol. IV, pages 351-428	
1-24-80	30	Transcript of Proceedings, vol. V, pages 429-508	
1-24-80	31	Transcript of Proceedings, vol. VI, pages 509-623	
4-21-80	32	Transcript of Proceedings, vol. VII, pages 624-745	
4-21-80	33	Transcript of Proceedings, vol. VIII, pages 746-872	
4-22-80	34	Transcript of Proceedings, vol. IX, pages 873-948	
4-22-80	35	Transcript of Proceedings, vol. X, pages 949-1048	
4-23-80	36	Transcript of Proceedings, vol. XI, pages 1049-1193	
9-19-79	37	Deposition of Charles B. Crail	(All the depositions are contained in a box)
9-21-79	38	Deposition of Bernice Edward Crane	
8-22-79	39	Deposition of William K. Pinefield	
9-10-79	40	Deposition of George Ford	
9-10-79	41	Deposition of Terry Hanners	
9-28-79	42	Deposition of Clarence S. Harmon	
4-15-80	43	Deposition of Marvin L. Jacobs	
8-22-79	44	Deposition of Charles R. Kolb	
9-28-79	45	Deposition of Claude W. O'Donnell	
9-10-79	46	Deposition of Eileen O'Neal	
9-21-79	47	Deposition of Robert J. Reviere	
9-10-79	48	Deposition of Albert Smith	
8-23-79	49	Deposition of Austin B. Smith	
9-27-79	50	Deposition of Sarah J. Spann	

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CIVIL DOCKET CONTINUATION SHEET

PLAINTIFF	DEFENDANT	DOCKET NO. 77-Orig.
State of Tennessee	State of Arkansas	PAGE 3 OF 3 PAGES

DATE	NR.	PROCEEDINGS
9-21-79	51	Deposition of Floyd Starnes
9-19-79	52	Deposition of A.E. Teaford
9-28-79	53	Deposition of Bennie M. Tolar
9-10-79	54	Deposition of James F. Tompkins

A-5(P) Appendix B

Tennessee
EXHIBITS

State of Tennessee
vs.
State of Arkansas

CAUSE NO. 77 Original

DATE	Identification No.	Identification Witness	DESCRIPTION	OFFERS OBJECTIONS RULINGS EXCEPTIONS
1-22-80	1	———	Copy of U.S. and state statutes	Received
1-22-80	2	Teaford	1972 U.S. Geo. Survey Quadrangle map--copy	"
1-23-80	3	Spann	copy of will	"
1-23-80	4	"	tax receipts on Spann Island, 1914-1978	"
1-23-80	5	"	contracts to sell brush on Spann Island, 1930-37	"
"	6	"	1931 lease on Spann Island to Mr. Hunter	"
"	7	"	1951-76 leases on Spann Island with Mr. Teaford	"
"	8	"	1975 letters between City of Luxora and Ms. Spann	"
"	9	"	1935 plat map of Spann Island	"
"	10	Crain	map--conflicting property ownership of islands	"
"	11	"	Index map for Lauderdale Co., Tenn.	"
"	12	"	Lauderdale Co. Tax Assessor maps	"
"	13	"	Lauderdale Co. Tax Assessor maps	"
"	14	"	1971 U.S. Agric. Dept. aerial photo index	"
"	15	Starnes	tax sale minute book entries--Lauderdale Co.	"
"	16	"	tax sale minute book entries--Lauderdale Co.	"
1-24-80	17	Crail	Title search records--Spann Property	"
"	18	"	Documents of Title--Spann Property	"
"	19	"	title search records--Cook property	"
"	20	"	documents of title--Cook property	"
"	21	"	title search records--Reviere property	"
"	22	"	documents of title--Reviere property	"
"	23	"	title search records--Love property	"
"	24	"	tax collection records for Lauderdale Co.	"
"	25	"	tax collection records for Lauderdale Co.	"
"	26	"	title search records in Ark.--Luxora Gin	"
"	27	"	title search records in Ark.--Westvaco	"

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Tennessee

EXHIBITS

State of Tennessee

vs.

State of Arkansas

CAUSE NO. 77 Original

DATE	Identification No.	Identification Witness	DESCRIPTION	OFFERS OBJECTIONS RULINGS EXCEPTIONS
1-24-80	28	Crail	Title search records in Ark.--Smith property	received
"	29	Harmon	1938 Lauderdale Co. Highway map	"
"	30	Tolar	U.S. mapping standards 1936-73	"
"	31	"	strip maps of Tenn.-Ark. boundary	"
"	32	"	strip maps of Tenn.-Ark. boundary	"
"	33	"	1955 Highway map of Lauderdale Co.	"
"	34	"	1964 Highway map of Lauderdale Co.	"
"	35	"	1970 Highway map of Lauderdale Co.	"
"	36	"	Tenn. state Highway maps 1940-1978	"
"	37	"	1972 U.S. geological survey quadrangle map	"
"	38	"	Admissions of Arkansas on state highway maps	"
"	39	"	1962 Osceola, Ark. plainning map	"
4-21-80	40	Kolb	resume of Kolb	"
"	41	"	portion of complaint map	"
"	42	"	drawing of examples of river cutoffs	"
"	43 A B	"	1879-80 Miss. River Comm. maps, Charts 15-16	"
"	44	"	1880 map with old channels drawn in	"
"	45	"	Corps of Engineers map of alluvial deposits	"
"	46	"	Chart of soil composition in Miss. River bed	"
"	47	"	1889 Miss. River Comm. map	"
"	48	"	1889 Miss. River Comm. map	"
"	49	"	1902 Miss. River Comm. map	"
"	50	"	1902 Miss. River Comm. map	"
"	51 A B	"	1912-15 Miss. River Comm. map, Charts 14-15	"
"	52	"	1912 Miss. River Comm. map	"
"	53	"	1912 Miss. River Comm. map	"
"	54	"	1919 Miss. River Comm. map	"

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Tennessee

EXHIBITS

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State of Tennessee

vs.

State of Arkansas

CAUSE NO. 77 Original

DATE	Identification No.	Identification Witness	DESCRIPTION	OFFERS OBJECTIONS RULINGS EXCEPTIONS
4-21-80	55	Charles Kolb	1919 Miss. River Comm. map	received
"	56	"	1912 Miss. River Comm. map	"
"	57	"	1930 Miss. River Comm. map	"
"	58	"	1930 Miss. River Comm. map	"
"	59	"	1932 Miss. River Comm. map	"
"	60	"	1932 Miss. River Comm. map	"
"	61	"	1935 Miss. River Comm. map	"
"	62	"	1948 Miss. River Comm. map	"
"	63	"	1948 Miss. River Comm. map	"
"	64	"	1962 Miss. River Comm. map	"
"	65	"	1962 Miss. River Comm. map	"
"	66	"	1971 U.S. Geo. survey map	"
"	67	"	1971 U.S. Geo. survey map	"
"	68	"	1971 U.S. Geo. survey map	"
"	69	Austin Smith	resume	"
"	70	"	list of cases testified in	"
"	71	"	1821 Young survey map	"
"	72	"	1837-43 township plats Arkansas	"
"	73	"	1841 Mississippi Delta survey	"
"	74	"	this number was skipped by the parties	"
"	75	"	1874 Sutter survey map	"
"	76	"	1879-80 Miss. River Comm. map	"
4-22-80	77 A B	"	1903 and 1904 Corps of Engineer dike maps	"
"	78	"	1902-07 Corps of Engineers survey	"
"	79	"	1908 Miss. River Comm. map	"
"	80	"	1912-15 Miss. River Comm. map	"
"	81	"	light lists	"

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Tennessee

EXHIBITS

State of Tennessee

vs.

State of Arkansas

CAUSE NO. 77-Original

DATE	Identification No.	Identification Witness	DESCRIPTION	OFFERS OBJECTIONS RULINGS EXCEPTIONS
4-22-80	82	Austin Smith	Miss. River Comm. Annual Reports	RECEIVED
"	83	"	1919 Miss. River Comm. map	"
"	84	"	1920 Miss. River Comm. map	"
"	85	"	1912 Miss. River Comm. map with changes to 1929	"
"	85 A	"	1912 map with bank and bar lines to 1924	"
"	85 B	"	1912 map with bank and bar lines to 1927	"
"	85 C	"	1924 Corps of Engineers map	"
"	86	"	1912 map with bank and bar lines to 1929	"
"	87	"	1929-30 Corps of Engineers map	"
"	88	"	1932-42 Corps of Engineers dredging maps	"
"	89	"	1937 Corps of Engineers map	"
"	90	"	1942-76 navigation survey charts	"
"	91	"	1948-49 Corps of Engineers map	"
"	92 A B	"	1973-75 and 1962-64 Corps of Enginseers maps	"
"	93	"	description of fixed boundary	"
"	94	"	map of area	"
4-22-80	95	"	overlay map of area	"

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Arkansas

EXHIBITS

State of Tennessee
VS
State of Arkansas

CAUSE NO. 77 Original

DATE	Identification No.	Identification Witness	DESCRIPTION	OFFERS OBJECTIONS RULINGS EXCEPTIONS
1-22-80	A	Tompkins	Collective notes	received
1-22-80	A-1	"	1970 Map-Miss. Co., Ark.	"
1-22-80	A-2	"	Plat Book page	"
1-22-80	A-3	"	Plat Book page	"
1-22-80	B	———	Transcript of case of Smith v. Smith	"
1-22-80	C	———	Transcript of case of Conway v. Shuck	"
1-22-80	D	———	Arkansas Supreme Court opinion in Conway v. Shuck	"
1-23-80	E	Albert Smith	aerial photograph	"
1-23-80	F	"	aerial photograph	"
1-23-80	G	"	aerial photograph	"
1-23-80	H	"	drawing of island	"
4-23-80	I	Austin Smith	1930 Corps of Engineers survey map	"
4-23-80	J	"	1932 Corps of Engineers record map	"
4-23-80	K	"	1932 Corps of Engineers general map	"
4-23-80	L	Marvin Jacobs	Resume	"
4-23-80	M	"	1938 map showing lower Mississippi River Channels	"

APPENDIX D

TENNESSEE—ARKANSAS STATE BOUNDARY IN THE ELMOT BAR-ISLAND 30 SECTOR OF THE MISSISSIPPI RIVER

The following is a description, by geodetic position (North American Datum) of the locus of the Tennessee-Arkansas State Boundary that became fixed in the abandoned Fletcher Bend Channel that bounds Elmot Bar-Island 30 on the North and West. This boundary, lying between North Latitude 35 deg. 40' 30.8" and North 35 deg. 45' 34.6" and West Longitude 89 deg. 52' 35" and West Longitude 89 deg. 57' 31.5", begins at the head of Elmot Bar-Island 30 Chute Channel and thence runs Northwestward, Southwestward, Southward and Southeastward, along fixed (dead) thalweg and last steamboat navigation course in the abandoned Fletcher Bend Channel to the foot of Elmot Bar-Island 30 Chute Channel.

The Locus of the said Tennessee-Arkansas State Boundary is depicted on the 1973-75 Mississippi River Hydrographic Survey and is described as beginning at the head of the Elmot Bar-Island 30 Chute Channel at *Point P-1* at North Latitude 35 deg. 44' 30.8" and West Longitude 89 deg. 52' 35";

Thence North to *Point P-2*, Lat. 35 deg. 44' 16.8" and Long. 89 deg. 52' 35";

Thence Northward to *Point P-3*, Lat. 35 deg. 44' 28.7" and Long. 89 deg. 52' 38";

Thence Northwestward to *Point-4*, Lat. 35 deg. 44' 42" and Long. 89 deg. 53'.

Thence Northwestward to *Point-5*, Lat. 35 deg. 45' and Long. 89 deg. 53' 22".

Thence Northwestward to *Point-6*, Lat. 35 deg. 45' 10" and Long. 89 deg. 53' 35";

Thence Northwestward to *Point-7*, Lat. 35 deg. 45' 17.8" and Long. 89 deg. 53' 47";

Thence Northwestward to *Point-8*, Lat. 35 deg. 45' 25.5" and Long. 89 deg. 54';

Thence Northwestward to *Point-9*, Lat. 35 deg. 45' 34.6" and Long. 89 deg. 54' 18";

Thence Westward to *Point-10*, Lat. 35 deg. 45' 33.5" and Long. 89 deg. 54' 30";

Thence Southwestward to *Point-11*, Lat. 35 deg. 45' 29.7" and Long. 89 deg. 54' 40";

Thence Southwestward to *Point-12*, Lat. 35 deg. 45' 23.8" and Long. 89 deg. 54' 47";

Thence Southwestward to *Point-13*, Lat. 35 deg. 45' 15.6" and Long. 89 deg. 55';

Thence Southwestward to *Point 14*, Lat. 35 deg. 45' and Long. 89 deg. 55' 30";

Thence Southwestward to *Point-15*, Lat. 35 deg. 44' 46.5" and Long. 89 deg. 56';

Thence Southwestward to *Point-16*, Lat. 35 deg. 44' 36.6" and Long. 89 deg. 56' 20";

Thence Southwestward to *Point-17*, Lat. 35 deg. 44' 27.9" and Long. 89 deg. 56' 40";

Thence Southwestward to *Point-18*, Lat. 35 deg. 44' 18.9" and Long. 89 deg. 57';

Thence Southwestward to *Point-19*, Lat. 35 deg. 44' 10.1" and Long. 89 deg. 57' 14";

Thence Southwestward to *Point-20*, Lat. 35 deg. 44' and Long. 89 deg. 57' 23";

Thence Southwestward to *Point-21*, Lat. 35 deg. 43' 39.2" and Long. 89 deg. 57' 31".

Thence Southward to *Point-22*, Lat. 35 deg. 43' 23.9" and Long. 89 deg. 57' 31.5".

Thence Southward to *Point-23*, Lat. 35 deg. 43' and Long. 89 deg. 57' 28.5";

Thence Southward to *Point-24*, Lat. 35 deg. 42' 42.6" and Long. 89 deg. 57' 25";

Thence South to *Point-25*, Lat. 35 deg. 42' 21.3" and Long. 89 deg. 57' 25";

Thence Southward to *Point-26*, Lat. 35 deg. 42' and Long. 89 deg. 57' 23";

Thence Southward to *Point-27*, Lat. 35 deg. 41' 43.6" and Long. 89 deg. 57' 23.5";

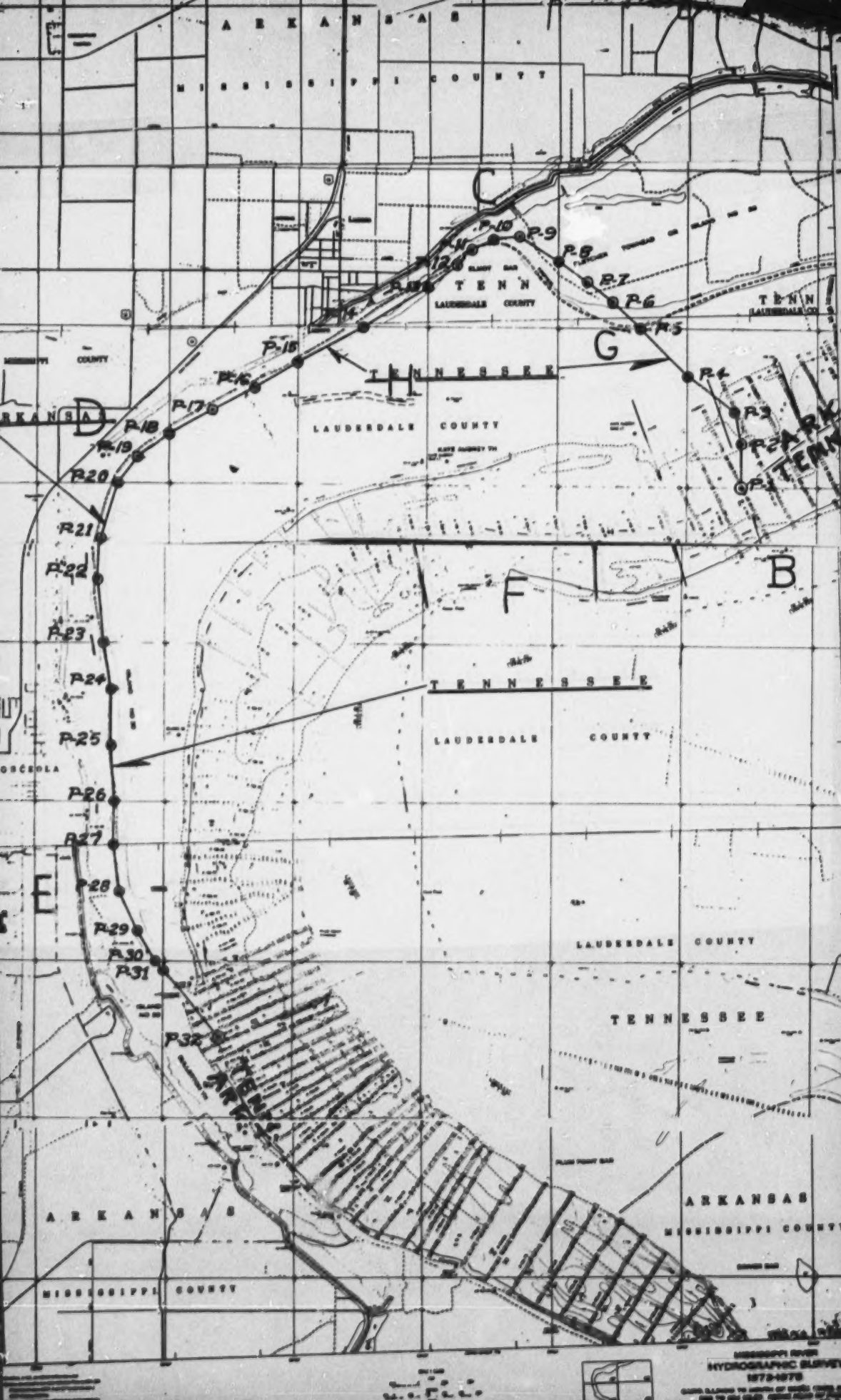
Thence Southward to *Point-28*, Lat. 35 deg. 41' 26.1" and Long. 89 deg. 57' 21";

Thence Southeastward to *Point-29*, Lat. 35 deg. 41' 11.4" and Long. 89 deg. 57' 12";

Thence Southeastward to *Point-30*, Lat. 35 deg. 41' and Long. 89 deg. 57' 03.5";

Thence Southeastward to *Point-31*, Lat. 35 deg. 40' 56.4" and Long. 89 deg. 57';

Thence Southeastward to *Point-32*, Lat. 35 deg. 40' 30.8" and Long. 89 deg. 56' 34" at the foot of the Elmot Bar-Island 30 Chute Channel.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